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REGION 2 NEWS

Observer Today: Council to oppose turbines on lake

The Dunkirk Common Council is expected to announce its opposition to the construction of wind turbine farms on city-owned property along Lake Erie.

Adirondack Daily Enterprise: States try again to block coal sales that Trump revived

A coalition of states, environmentalists and American Indians on Monday renewed its push to stop the Trump administration from selling coal from public lands after a previous effort to halt the lease sales was dismissed by a federal judge.

NJ Spotlight: Bill Advances to Help Lower-Income Communities in NJ Block Projects that Could Increase Pollution

Despite pushback from the business community, an Assembly committee cleared a bill Monday that would give minority and low-income communities more leverage in blocking new projects that could increase pollution burdens in areas already suffering from adverse environmental impacts.

El Nuevo Dia: Wanda Vázquez calls an extraordinary session to attend to measures related to health and other issues

Governor Wanda Vázquez Garced announced today the convening of an extraordinary session to address measures related to the health issue, the withdrawal of public employees and the allocation of donations or funds for various issues such as non-profit organizations and the Collection Center of Municipal Income (CRIM).

NotiCel: Governor will convene extraordinary session

Governor Wanda Vázquez Garced will announce this morning that she will convene an Extraordinary Session to attend to matters that were pending at the close of work of the ordinary session of the Legislature.

Primera Hora: Businesses in the western area closed for violating executive order of Wanda Vázquez

Two businesses in the Mayagüez area were closed for violation of Governor Wanda Vázquez's executive order to control the coronavirus pandemic, police reported

E&E Daily: Hearing to focus on Puerto Rico power grid woes

The House Natural Resources Committee will return this week to Puerto Rico's energy production and distribution concerns.

InsideEPA TSCA: EPA Draws First TSCA Suit Over Methylene Chloride's No-Risk Findings

A coalition of environmental and labor groups has sued EPA over its risk evaluation for methylene chloride challenging the agency's finding of no unreasonable risk for a handful of uses, the first such lawsuit over EPA's first final risk evaluation under TSCA section 6.

NASA: NASA Helps Puerto Rico Prepare for Saharan Dust Impacts

Puerto Rico now has an air quality warning system that provides three days of advance notice about potentially harmful dust that travels across the Atlantic Ocean from the Sahara Desert.

Newsday: Smithtown officials say shallow part of Sound a public safety issue

Smithtown Deputy Supervisor Thomas McCarthy also made a public safety argument: Harbor access is vital in an emergency, he said, because “it leads to Stony Brook boat ramp, which leads to the best trauma center on Long Island.”

Staten Islands Advance: Toxic hand sanitizers recalled for containing methanol

STATEN ISLAND, N.Y. – The Food and Drug Administration is warning consumers not to use several hand sanitizers because they illegally contain toxic levels of methanol.

Newsday: State extends time for proposals for public takeover of NY American Water

The Public Service Commission on Thursday extended until Oct. 15 the period for municipalities and authorities to submit plans for a possible public takeover of all or part of the New York American Water.

NATIONAL

Administration

E&E News: EPA press aide moves to White House

Air

Bloomberg Law: EPA Inches Closer to Regulating Greenhouse Gases From Airplanes

Chemicals

Wall Street Journal: Bayer Loses Roundup Weedkiller Appeal

COVID

Homeland News: Sen. Feinstein urges HHS, EPA to implement COVID-19 wastewater surveillance program

JD Supra: COVID-19 Impacts in Massachusetts: Massachusetts State and Federal Courthouses Re-Open In Phased Approach

Water

Regulatory Review: Closing a Concocted Clean Water Act Loophole

Pollution

News Herald: EPA: McLouth Steel cleanup 'going very well'

Waste Today: EPA recounts waste management progress in US for 50th anniversary

Policy

E&E News: Spending package with Interior-EPA bill on the floor this week

Inside EPA: Congress Returns To Packed Agenda On PFAS Controls, Funding Measures

Bloomberg Law: New York Loses Bid to Stop Waste Dump in Long Island Sound

FULL ARTICLES

REGION 2

Observer Today

<https://www.observertoday.com/news/page-one/2020/07/council-to-oppose-turbines-on-lake/>

Council to oppose turbines on lake

By Jo Ward

July 21, 2020

The Dunkirk Common Council is expected to announce its opposition to the construction of wind turbine farms on city-owned property along Lake Erie.

The resolution will be put forth by First Ward Councilman Don Williams, Third Ward Councilman James Stoye and Fourth Ward Councilwoman Nancy Nichols. The council cites that upon information and belief, the construction of these turbines on Lake Erie waters could impact fishing waters through the destruction of spawning grounds and the release of pollutants into the waters as well as physical barriers to fishing vessels.

The council also cites certain studies that show negative impact on migratory birds, causing deaths to birds that make a home along the lake.

Council's resolution comes days after Concerned Citizens For Rural Preservation came out with a statement that over the weekend that noted turbines pose "tremendous risks" to the Great Lakes.

"Offshore industrial wind turbines will need to be massive in order to be cost competitive because they are incredibly expensive to install," Save (Lake) Ontario Shores Vice President Kate Kremer said. "Lake Erie and Lake Ontario are less than 60 miles wide making proximity to the shoreline closer to shore than ocean-based turbines. Lakes Erie and Ontario are the smallest and already the most stressed of the five Great Lakes from decades of industrial runoff and other uses along their shores.

"Stirring up legacy pollutants that are in the sediment of the lakes is an environmental disaster in the making. The lakes need restoration, not additional stresses."

Also tonight, the paralegal position that was passed unanimously by the council at the July 7 meeting was vetoed by Mayor Wilfred Rosas on several grounds including that the "responsibility for negotiation of all employee contracts" is not the council's and the council worked with the unions to work out this contract and

not the mayor. Also cited is the upcoming deficit due to COVID-19 and the conflict of interest as the paralegal assists the city attorney who is therefore involved in all elements of contract negotiations and grievances.

The council, which approved the resolution by a 5-0 vote, can override the veto citing that the position must comply with all appropriate civil service laws, rules and regulations.

The Dunkirk Common Council will meet tonight at 5:30 p.m. but is closed to the public. It can be viewed on the Dunkirk Public Access channel and YouTube.

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Adirondack Daily Enterprise

<https://www.adirondackdailyenterprise.com/news/2020/07/states-try-again-to-block-coal-sales-that-trump-revived/>

States try again to block coal sales that Trump revived

By Matthew Brown

July 21, 2020

A coalition of states, environmentalists and American Indians on Monday renewed its push to stop the Trump administration from selling coal from public lands after a previous effort to halt the lease sales was dismissed by a federal judge.

Joined by the Northern Cheyenne Tribe and several environmental groups, Democratic attorneys general from California, New York, New Mexico and Washington state filed a lawsuit challenging the administration's coal program in U.S. District Court in Montana.

They alleged the administration acted illegally when it resumed coal sales that had been halted under Obama due to climate change and other concerns.

The case is among scores of legal challenges that environmentalists and their political allies have launched to counter the Trump administration's push for more domestic energy production and less stringent regulations.

Interior Department spokesman Conner Swanson panned the lawsuit as a "laughable attempt" to revive an issue that the court already addressed.

Under Trump, the Department of Interior lifted a 2016 moratorium on federal coal sales and concluded they have limited environmental impacts.

"The Department is confident the court will agree that the analysis by our career experts is lawful and based on the best available science," Swanson said.

Attorneys for the states and other plaintiffs in the case argued that the administration's environmental review was flawed, because it was based on just four leases that were sold under Trump and did not look at hundreds of existing leases and potential future sales.

"The Trump administration has repeatedly thrown out the rule book in order to benefit super polluting coal companies. It's not only immoral – it's illegal, and we intend to prove it," California Attorney General Xavier Becerra said in a statement.

Federal coal sales account for about 40% of U.S. coal production, primarily from large strip mines in western states including Wyoming, Colorado, Montana and Utah.

Coal mining companies saw demand for the fuel drop dramatically over the past decade due to competition from natural gas and renewable fuel sources. Trump has sought to prop the industry back up, but that's done little to slow its downward spiral and the coronavirus pandemic has accelerated the decline.

In May, U.S. District Judge Brian Morris said the administration had fixed its initial failures to consider the climate change consequences from ending the moratorium. That ruling came after the administration in February released an analysis that said resuming coal sales would mean little difference over time in greenhouse gas emissions from burning coal.

But Morris declined to weigh in regarding the accuracy of the administration's conclusions, saying only that the analysis was enough to fulfill the administration's immediate obligations.

The state attorneys general said the administration considered emissions only from a handful of leases and failed to capture the cumulative, long-term impact of the coal program.

They argue the Interior Department analysis also ignored other harms, including damage to wildlife and the land from coal mining, pollution from burning the fuel and the vast quantities of toxic ash that is generated by coal-burning power plants.

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NJ Spotlight

<https://www.njspotlight.com/2020/07/bill-advances-to-help-lower-income-communities-in-nj-block-projects-that-could-increase-pollution/>

Bill Advances to Help Lower-Income Communities in NJ Block Projects that Could Increase Pollution

Measure easily passes Assembly committee. Business interests warn of negative economic consequences

By Tom Johnson

July 21, 2020

Despite pushback from the business community, an Assembly committee cleared a bill Monday that would give minority and low-income communities more leverage in blocking new projects that could increase pollution burdens in areas already suffering from adverse environmental impacts.

The legislation ([S-232](#)), part of a two-bill package aimed at addressing environmental-justice issues impacting communities across New Jersey, is viewed by advocates as the most significant step ever taken to address unhealthy levels of pollution affecting many poor and urban communities in the state.

The bill, approved by the Assembly Environment and Solid Waste Committee, would require state environmental officials to consider the cumulative impacts of locating new power plants or major new manufacturing facilities where residents already suffer from pollution from incinerators, hazardous waste sites, or waste transfer stations.

“We need protections,” said Marie Lopez-Núñez, deputy director of the Ironbound Community Corporation in Newark, referring to a neighborhood with three power plants, a garbage incinerator, a massive sewage treatment plant, and a number of hazardous waste sites.

The legislation “can stop a racist legacy of placing all the bad things in places where people of color live,” she said. “This bill is going to give us hope.”

But opponents of the bill argued the measure is so expansive — affecting portions of more than 310 communities — that it could stifle economic growth in many of the same urban communities desperate for job opportunities for their residents. The result could be uncertainty that will delay many major infrastructure projects, according to construction and trade representatives.

“There is a large impact that everyone needs to understand by the implications of this bill,” said Dennis Hart, executive director of the Chemistry Industry Council of New Jersey, seeking to delay the bill. “Otherwise, we will regret it.”

Ray Cantor, a vice president of the New Jersey Business & Industry Association, argued the bill, as drafted, will not do much to address the problems it aims to address, but will drive manufacturing out of the state. His concerns centered on the 237 facilities with air permits that would come up for renewal under the program.

The case for, the case against

“What we fear, on renewal (of those permits), the facility will be told to cut back hours, cut back operations and cut back emissions,” he said.

Others argued the problems associated with environmental-justice communities will not be ended with this bill — even if it is enacted. Paul Gilman, a senior vice president of Covanta, a company that operates garbage incinerators in Newark and Camden, said those facilities reflect only a small portion of the pollution burden in those communities.

“The problems won’t end with this first great step,” Gilman said.

Others thought differently. Nicky Sheats of the Environmental Justice Alliance argued the recent past has underscored how low-income communities are particularly affected by environmental-justice issues, citing the lead poisoning in Flint, Michigan of drinking water supplies and the recent coronavirus pandemic, where populations of color were more heavily impacted.

“How many times do we have to hear that lesson before we finally act?” Sheats asked.

The bill has powerful advocates pressing for its passage, including Gov. Phil Murphy, who endorsed the legislation last month, a position he rarely takes before a bill winds up on his desk..

On Monday, the Assembly committee began with U.S. Sen. Cory Booker saying why he is backing the bill in a Zoom session from a car, parked off the New Jersey Turnpike, on his way back to Washington D.C. The bill before the Legislature incorporates aspects of legislation Booker is sponsoring in Congress.

Meanwhile, without a lot less controversy, the Senate Environment and Energy Committee approved a bill, sponsored by Sen. Troy Singleton (D-Burlington), that would establish an Office of Clean Energy Equity in the New Jersey Board of Public Utilities. Among other things, that bill would target at least \$50 million a year from the state’s clean-energy program to fund projects in so-called overburdened communities.

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<https://www.elnuevodia.com/noticias/gobierno/notas/wanda-vazquez-convoca-a-una-sesion-extraordinaria/>

Wanda Vázquez calls an extraordinary session to attend to measures related to health and other issues

The governor would also submit projects to remove the Forensic Science Bureau from the Department of Public Safety.

July 20, 2020

By Gloria Ruiz Kulian

Governor Wanda Vázquez Garced announced today the convening of an extraordinary session to address measures related to the health issue, the withdrawal of public employees and the allocation of donations or funds for various issues such as non-profit organizations and the Collection Center of Municipal Income (CRIM).

Vázquez Garced would also submit projects in this extraordinary session to remove the Institute of Forensic Sciences (ICF) from the Department of Public Safety (DSP) and another measure to prohibit workplace harassment.

During a press conference, he specified that he would be presenting a project to amend the Pharmacy Law and the Insurance Code in order to streamline the process of adjudication and payment of claims submitted by health service providers to insurers.

"The times when doctors and patients have to be struggling to achieve an adequate medical service, an accessible and agile service, and where, in addition, they have to ask permission from each administration insurers will begin to be a thing of the past," said the first executive.

Referendum on the way

Similarly, Vázquez Garced will submit legislation to raise the retirement of public employees to a constitutional level.

"Our public servants deserve justice. For years they worked hard and their retirement was discounted so that they are now affected. It is not fair and, therefore, they deserve that the payment of their retirement be raised to constitutional rank," said Vázquez Garced accompanied by the legislative presidents, Thomas Rivera Schatz and Carlos "Johnny" Méndez, among other legislators.

The governor specified that, if this measure is approved, a referendum would be held the same day of the general election to consult the people if they want the Constitution to be amended to recognize the withdrawal of public servants as a constitutional right .

He explained that the people endorsing the constitutional change, would place the payment of pensions for all retirees from the government, including those of the Teachers System and those of the Judiciary "in the first order of hierarchy along with the payment of interest and amortization of public debt ".

Likewise, the governor will submit to the Legislature a joint resolution to allocate \$ 536 million to the Title 3 Emergency Reserve, another resolution that would allocate \$ 20 million to non-profit organizations and Senate Resolution 547 that would authorize the Treasury to provide a \$ 185 million loan to CRIM. She assured that the Fiscal Oversight Board endorsed these disbursements of funds.

In the extraordinary session, the bill of the 2075 Chamber will also be evaluated, seeking that the ICF is no longer part of the DSP, an agency that was created under the administration of Ricardo Rosselló Nevares, while Vázquez Garced was secretary of Justice.

Law firm

The governor also took advantage of the conference to announce that she signed the measure that allows the Housing Finance Authority (AFV) to transfer repossessed homes for families affected by the earthquakes in the south of the island.

"This allows the municipalities of Ponce, Guánica, Yauco, Utuado, Guayanilla and Peñuelas to donate or give in usufruct the homes to those who lost their homes," explained Vázquez Garced.

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NotiCel

<https://www.noticel.com/ahora/top-stories/20200720/gobernadora-convocara-sesion-extraordinaria/>

Governor will convene extraordinary session

The president will include sympathetic measures for voters.

By Cynthia López Cabán

July 20, 2020 (updated)

Governor Wanda Vázquez Garced will announce this morning that she will convene an Extraordinary Session to attend to matters that were pending at the close of work of the ordinary session of the Legislature.

NotiCel sources indicated that the president ponders several sympathetic measures for voters because internal polls reveal that her candidacy for governor has lost momentum.

A source noted that Vázquez Garced is evaluating an amendment to the health plan coverage to remove insurers' discretion to impose a cap on treatments and an increase in the minimum wage, among other proposals.

It will also include a measure, left in the open, on legislative donations for nonprofits.

The secrecy is such that the governor has not informed legislators of the measures that will be included in the call.

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Primera Hora

<https://www.primerahora.com/noticias/gobierno-politica/notas/cierran-negocios-en-el-area-oeste-por-violar-orden-ejecutiva-de-wanda-vazquez/>

Businesses in the western area closed for violating executive order of Wanda Vázquez

In a business, a woman was denounced for being with her two youngest children and none with a mask.

July 19, 2020

Two businesses in the Mayagüez area were closed for violation of Governor Wanda Vázquez's executive order to control the coronavirus pandemic, police reported

The interventions occurred as part of a work plan in which, in addition to the Police Bureau, personnel from the Planning Board, the Special Investigation Bureau (NIE), the Fire Bureau, the Department of the Treasury and the Electric Power Authority (PREPA).

In addition, a 38-year-old woman residing in Mayagüez was denounced for violation of the executive order for not having any type of mask, as well as her two children, aged 12 and 17. that they were with her in said business and did not use masks either. About this incident, a referral was made to the Family Department.

These were the results of fines issued:

Lechonera Manteca, highway 114 km 7.7 in Hormigueros : Time: 5:30 pm The Treasury issued a fine of \$ 500 for section 6042, the gateway between Business and Residence. The Planning Board advised that it cannot continue with the sale of beverages by the Executive Order.

Business: Campfire, highway 3301 km 2.9, El Combate neighborhood, Cabo Rojo: Firefighters issued fines for not having a suppression system for the kitchen (\$ 200), without protection for the electrical system (\$ 500) and the kitchen hood does not cover the equipment (\$ 500). The Planning Board ordered the immediate closure as it has a cafeteria permit and is in violation of the Executive Order. The Police Bureau denounced by Dry Law a 22-year-old citizen residing in Estancias de Arroyo in the town of Florida.

Business: Señor Burger, highway 3301 km 2.9, Combate, Cabo Rojo : Time: 7:30 pm, Firefighters issued fines for expired permit (\$ 500), kitchen suppression system (\$ 200) and fire extinguishers (\$ 200). The Planning Board indicated that it does not have cafeteria jurisdiction and ordered the immediate closure as it was in violation of the Executive Order.

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E&E Daily

https://www.eenews.net/eedaily/2020/07/20/stories/1063581435?utm_medium=email&utm_source=eenews%3Aeedaily&utm_campaign=edition%2BiZ%2B%2FftFV%2B2LxUfHtN5bxJQ%3D%3D

Hearing to focus on Puerto Rico power grid woes

By Manuel Quifiones,

July 20, 2020

The House Natural Resources Committee will return this week to Puerto Rico's energy production and distribution concerns.

Hurricane Maria in 2017 destroyed the power grid and crippled generation, leaving large parts of the island in the dark for months.

A string of earthquakes that started last year — from small to significant — has further hurt the indebted island's infrastructure.

The Puerto Rico Electric Power Authority has been drowning in debt for years, and the natural disasters have only made things worse.

In February, the House approved a \$4.7 billion aid package for Puerto Rico, including investments in the energy sector. The White House threatened to veto the bill ([*Greenwire*](#), Feb. 7).

Officials have been working for years to privatize at least part of PREPA's operations and last month announced plans for private firms to take over transmission and distribution ([*Energywire*](#), June 23).

Natural Resources Chairman Raúl Grijalva (D-Ariz.) and other Democrats who follow Puerto Rico issues have also called for scrutinizing plans to convert some generation units to natural gas.

The Natural Resources Committee has jurisdiction over the territories and took the lead on financial stability legislation when Republicans controlled the House. Grijalva is seeking changes.

Schedule: The hearing is Thursday, July 23, at 3:30 p.m. in 1324 Longworth and via [webcast](#).

Witnesses:

- José Ortiz, executive director of the Puerto Rico Electric Power Authority.
- Edison Avilés-Deliz, chair of the Puerto Rico Energy Bureau.
- Ruth Santiago, member of the Queremos Sol coalition.
- Ángel Figueroa Jaramillo, president of the Electrical Industry and Irrigation Workers Union.
- Josen Rossi, president of the Puerto Rico Institute for Competitiveness and Sustainable Economy.
- Fermín Fontanés, executive director of the Puerto Rico Public-Private Partnerships Authority.

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InsideEPA TSCA

<https://insideepa.com/tsca-news/epa-draws-first-tsca-suit-over-methylene-chloride%E2%80%99s-no-risk-findings?s=eml>

EPA Draws First TSCA Suit Over Methylene Chloride's No-Risk Findings

July 20, 2020

A coalition of environmental and labor groups has sued EPA over its risk evaluation for methylene chloride challenging the agency's finding of no unreasonable risk for a handful of uses, the first such lawsuit over EPA's first final risk evaluation under TSCA section 6.

"While Congress directed EPA to conduct comprehensive risk evaluations that protect the most susceptible populations, the Trump administration prepared an unlawfully narrow evaluation that ignores the ways that many people are exposed to methylene chloride," said Jonathan Kalmuss-Katz, an attorney at Earthjustice, in a July 16 statement announcing the lawsuit.

"The methylene chloride risk evaluation completely fails to consider the presence of methylene chloride in our air and drinking water, the effects of methylene chloride on ozone depletion, and the risks to workers who are not provided respirators and other [personal protective equipment]."

[The lawsuit](#) is the first in a string of expected challenges to EPA's first 10 risk evaluations for high-priority existing chemicals under section 6 of the Toxic Substances Control Act (TSCA) to be issued as final in the coming months.

The landmark lawsuit was filed in the U.S. Court of Appeals for the 9th Circuit by a coalition led by Earthjustice that includes the Natural Resources Defense Council, United Steelworkers Union, Sierra Club, Neighbors For Environmental Justice, and New Jersey Work Environment Council.

The suit marks the first challenge to the nearly three dozen risk evaluations and their associated determinations the agency is slated to issue in the coming months and will test a host of approaches, especially EPA's controversial decision to preclude already regulated uses from its analyses.

The suit was widely expected as environmentalists had charged in public statement that the final evaluation violated TSCA.

EPA issued the risk evaluation for methylene chloride on June 19 which concluded that 47 of 53 commercial, industrial and consumer uses it evaluated pose "unreasonable risks" to human health that require regulation under the revised statute, but that six other uses do not pose such risks and are therefore not eligible for regulation.

EPA said it will begin the process of developing ways to address the unreasonable risks identified by its evaluation, noting it has up to one year to propose and take public comments on any risk management actions, according to the agency's June 19 press statement.

EPA's notice said the agency will "initiate TSCA section 6(a) risk management actions on these conditions of use as required under TSCA section 6(c)(1)." Also, EPA's notice said "a determination of 'unreasonable risk' is not considered to be a final Agency action," a stance consistent with the law which says the agency's action is final once it issues risk management actions to address any unreasonable risks.

While some industry lawyers have told *Inside TSCA* that environmentalists may have to wait to challenge the no unreasonable risk finding until the agency takes final action, environmentalists and other industry lawyers say the agency's evaluation includes orders indicating the no unreasonable risk finding is final.

As a result, environmentalists are moving forward with their legal challenge, targeting among other things, the agency's assumption that workers use personal protective equipment (PPE), limiting their risks.

"EPA knows that many workers lack access to adequate PPE, and that many of those who are provided respirators are not protected by them. EPA's assumptions of universal PPE use are wrong, dangerous, and unlawful," Debra Coyle McFadden, executive director of New Jersey Work Environment Council, one of the petitioners, said in the statement issued by Earthjustice.

Earthjustice and NRDC sued EPA last year for excluding workers from a ban on methylene chloride paint strippers, which is pending before the U.S. Court of Appeals for the 2nd Circuit, the groups said in announcing their latest lawsuit. -- *Rick Weber* (rweber@iwpnews.com)

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NASA

<https://www.nasa.gov/feature/nasa-helps-puerto-rico-prepare-for-saharan-dust-impacts>

NASA Helps Puerto Rico Prepare for Saharan Dust Impacts

July 20, 2020

Puerto Rico now has an air quality warning system that provides three days of advance notice about potentially harmful dust that travels across the Atlantic Ocean from the Sahara Desert.

NASA Earth-observing satellite data have shown that dust can ride air currents for 6,000 miles or more, affecting air quality that can be hazardous to human health. The project is led by NASA-funded researcher Pablo Méndez-Lázaro.



Clear skies over Luis Muñoz Marín International Airport in San Juan, Puerto Rico on June 20 (left) and during the dust storm on June 23, 2020 (right).

"Being able to see this dust before it arrives is a critical tool for public health," said Méndez-Lázaro, an associate professor at the University of Puerto Rico Medical Sciences Campus in San Juan. "We alerted federal and state agencies as well as medical doctors, which gave them time to alert the public and vulnerable populations like people with asthma. Before, decision-makers lacked the specific information to help the public protect themselves in advance."

Dust often travels across the Atlantic and is a natural fertilizer for plants and coral, but the dust, especially in large quantities, causes poor visibility and air quality. It affects human health by causing irritation of eyes, nose and throat and it often contains fine particulates of silica and other minerals that are of a size that can easily infiltrate and irritate lung tissue.

"Vulnerable populations like children, the elderly and people with asthma or other pre-existing health conditions can be adversely affected," Méndez-Lázaro said. "So, getting three additional days of warning can give people time to prepare."

Méndez-Lázaro's air quality monitoring system was in place just in time for the historically large cloud of Saharan dust reaching Puerto Rico in June. "We saw the dust cloud forming and crossing the Atlantic almost a week before it arrived in Puerto Rico," Méndez-Lázaro said.

His team swung into action, contacting federal and state health agencies like the Puerto Rico Department of Health, the National Weather Service-San Juan Office and the Department of Natural Resources-Office of Air Quality.

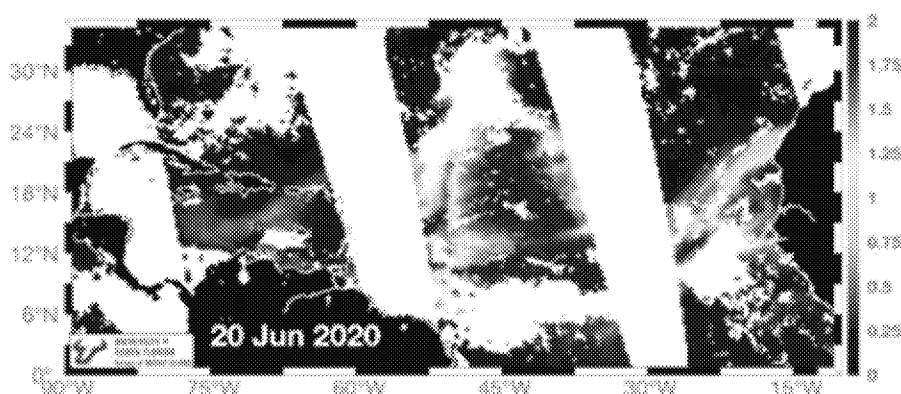
As a result, the Office of Public Health Preparedness and Response (OPHPR) and the Emergency Management Office in Puerto Rico issued a press release with suggestions and recommendations to protect public health. In addition, during the dust event OPHPR helped keep the public informed through their Facebook page, while Méndez-Lázaro's team also provided updates through the University of Puerto Rico's Facebook pages.

The team reached out directly to the medical doctors already collaborating with their research team to raise awareness of the upcoming hazardous conditions, allowing them to alert their at-risk patients. "Having those three days allowed people to prepare to take steps like staying indoors or taking needed medication," Méndez-Lázaro said. In turn, the doctors informed Méndez-Lázaro's team about the health coverage they delivered during the event, helping the NASA team understand how patients responded to these warnings.

The team also did a Facebook Live broadcast with local meteorologist Ada Monzón that reached 374,000 people, and a Facebook Live broadcast with National Weather Service - San Juan Office. The broadcasts explained the hazardous conditions while providing preparedness measures and recommendations.

In setting up the air quality system, Méndez-Lázaro's team installed on-the-ground air monitors as well as analyzed data from Earth-observing satellites. As Saharan dust travels across the Atlantic, it reflects visible and infrared light, which is detected by the National Oceanic and Atmospheric Administration (NOAA) GOES-16 (EAST) satellite; the Moderate Resolution Imaging Spectroradiometers (MODIS) on NASA's Terra and Aqua satellites; and the Visible Infrared Imaging Radiometer Suite (VIIRS) on the joint NASA/NOAA Suomi NPP satellite.

While satellites collect data from orbit, Olga Mayol-Bracero and others on Méndez-Lázaro's team also took samples from the ground-based air monitors. Using a technique called light scattering to assess the dust samples, they could discern if the particles were from Saharan dust or local pollution sources. By confirming the origin of the dust samples on the ground, the team was able to confirm predictions they had made based on satellite data about when the dust would make landfall. Ensuring the team's predictions were correct resulted in public officials in Puerto Rico having reliable information three days before the arrival of potentially hazardous Saharan dust.



As the dust storm crossed the Atlantic Ocean, the Suomi NPP satellite passed overhead. The dark red areas show the highest concentration of dust; blue areas show the lowest. This "Aerosol Optical Depth" (AOD) measures the level at which particles like dust prevent light from traveling through the atmosphere. As AOD increases above 0.5, the dust becomes so dense that the sun is obscured to those on the ground. Image taken by the Suomi NPP Visible Infrared Imaging Radiometer Suite (VIIRS).

Achieving these three days of lead time took Méndez-Lázaro's team three years of overcoming one unusual obstacle after another, from a hurricane to an earthquake to a global pandemic.

The 2020 Saharan dust storm was just the most recent event affecting the project and local residents of the island. In January 2020, a significant earthquake interrupted communications in Puerto Rico. Then, the spread of coronavirus (COVID-19) around the world led to travel restrictions, preventing the team from installing a round of instruments for air quality monitoring in the city of San Juan.

Even before those challenges, the team had to overcome significant adversity to get the system up and running. Three years ago, in summer 2017, Méndez-Lázaro's team was just preparing to present to NASA this applied research idea of tracking the movement of dust from the Sahara Desert across the ocean. Then one of the most powerful storms to hit Puerto Rico arrived; Hurricane Maria, the first Category 4 cyclone to hit the island since 1932.

Because Méndez-Lázaro's team is part of a medical college, they helped with hurricane response efforts – including providing supplies, medical assistance and educational material on environmental health and hygiene issues like water, air and food quality. "Working on a medical science campus, we have access to physicians and medicine. We were able to form a public health brigade five to six days after the hurricane – even outside the scope of our project – to visit communities unable to get access to medical services."

In the wake of the hurricane's devastation, citizens and businesses began using portable electric generators which affected air quality in a way that public health officials were not expecting. This was a turning point for the NASA project, giving Méndez-Lázaro's team the idea to incorporate this growing source of pollution in their research proposal. They worked through power, internet and phone outages to prepare a new proposal for the NASA Earth Applied Sciences Program – and it was accepted.

Since then, Méndez-Lázaro has worked with patients, doctors and decision-makers to understand the information that local communities need to make decisions on air quality management. He discovered that many residents were not aware that dust was a threat to their health – and realized that education efforts would be critical for the success of this early warning system.

"We can send out a warning, but it's no good if people aren't listening," said Méndez-Lázaro. "Our challenge is also to help people understand why this matters and what their options are to protect themselves. This is especially important to the most vulnerable – kids, the elderly and patients with preexisting conditions are most susceptible to African dust."

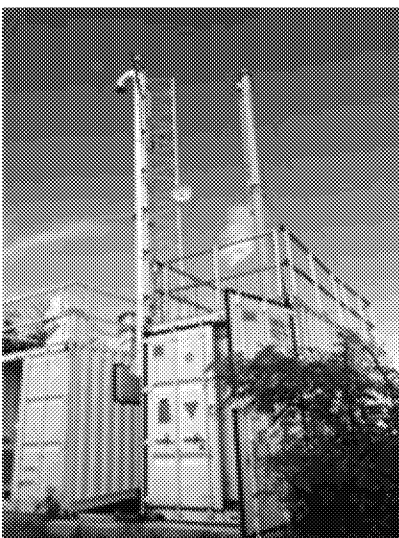
As they prepared focus group discussions with doctors and residents, a political crisis in summer 2019 led to the resignation of the governor of Puerto Rico. This event interrupted funding at the public university, but the team was able to restore access to lab equipment and finished collecting feedback on the types of educational outreach and warnings that would best help the community.

"After all these obstacles, we visited Puerto Rico and expected their activities to have come to a standstill," said John Haynes, head of NASA's Health and Air Quality program area. "Instead, we saw several hundred partners, researchers and community practitioners who were excited to contribute to this project and continue advancing the study of air quality for public health."

Despite all the challenges, Méndez-Lázaro sees the opportunity to make things better for the future.

"Sometimes, it's overwhelming when you try to get your head above water and these things push you back down," he said. "But I've also seen them as opportunities to get stronger for Puerto Rico. A lot of learning experiences where, if we are smart enough to make it through, we can be better prepared for the future."

Now, the team is focusing on next steps, including continuing their collaboration with researchers Dan Otis, Digna Rueda and Frank Muller-Karger from the University of South Florida in Tampa, who were instrumental in incorporating NASA satellite data from the VIIRS instrument. They also are strengthening their outreach for physicians, decision-makers and the general public including printed brochures, infographics and working with Ecoexploratorio the Museum of Science in Puerto Rico.



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Newsday

<https://www.newsday.com/long-island/suffolk/smithtown-dredging-stony-brook-harbor-1.46948102>

Smithtown officials say shallow part of Sound a public safety issue

By Nicholas Spangler

July 19, 2020



Smithtown Deputy Supervisor Thomas McCarthy also made a public safety argument: Harbor access is vital in an emergency, he said, because “it leads to Stony Brook boat ramp, which leads to the best trauma center on Long Island.”

Dredging to establish or maintain a navigation channel requires a state permit. Department of Environmental Conservation spokesman Bill Fonda wrote in an email that the agency would “conduct a thorough review that incorporates public input” if a permit application is submitted. “New dredging projects require considerable scientific analysis focusing on items such as impacts to the benthic environment, the hydraulic impacts of the proposed dredging operation, and other environmental considerations,” he wrote.

Smithtown Department of Environment and Waterways director David Barnes said the stretch of bay bottom to be dredged had filled in from sand after storms and natural “migration” of sand along the shoreline. It was unclear if the area has been dredged before, he said; there may have been sand mining in the area in the 1930s and '40s.

“We want to do it in a way that doesn’t damage any underwater fauna or flora,” he said.

Mike Kaufman, who sits on the county Dredge Project Screening committee, one of the bodies that will consider the town’s application, said that dredging close to the harbor could alter its hydrology, introducing poorly oxygenated water from deep in the bay and threatening plant and animal life. “There’s a major concern to the entire harbor if those channels become too deep,” he said. Stony Brook University oceanographer Lawrence Swanson made a similar warning in his 2016 book, “Between Stony Brook Harbor Tides”: “Dredging the outer channel would reduce the quality of the water in the harbor.” Dredging would reduce current speeds, reducing the agitation of the water entering and leaving the harbor “and thus the aeration that occurs in the process,” Swanson wrote.

Assemb. Steve Englebright (D-Setauket), a geologist who has no oversight authority over the project, said that adding large amounts of sand to a beach could create a host of new problems. Excess sand at West Meadow Beach, for example, could blow over Trustees Road and threaten nearby marshland.

Both men also warned that dredging might not provide a long-term solution. “If you cut a narrow stretch with a dredge,” said Englebright, “mega-ripples” of sand that are on the bay bottom now might easily “migrate and fill it in.”

Then there is the matter of cost, which could be ongoing: “I am astonished that when the county is almost half billion dollars in projected deficit that this particular type of expenditure is even being contemplated,” he said.

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Staten Islands Advance

<https://www.silive.com/news/2020/07/toxic-hand-sanitizers-recalled-for-containing-methanol.html>

Toxic hand sanitizers recalled for containing methanol

By Ann Marie Barron

July 17, 2020



STATEN ISLAND, N.Y. – The Food and Drug Administration is warning consumers not to use several hand sanitizers because they illegally contain toxic levels of methanol.

Methanol, or wood alcohol, is a substance that can be toxic when absorbed through the skin or ingested and can be life-threatening, the FDA announced. The agency tested and found the substance to be present in several Blumen hand sanitizer products. These products have been voluntarily recalled.

The agency said it has seen a sharp increase in hand sanitizer products that are labeled to contain ethanol (also known as ethyl alcohol), but that have tested positive for methanol contamination.

The agency said in its announcement that it is aware of adults and children ingesting hand sanitizer products contaminated with methanol that has led to blindness, hospitalizations and death.

“Methanol is not an acceptable active ingredient for hand sanitizers, and must not be used due to its toxic effects,” the FDA said. “FDA’s investigation of methanol in certain hand sanitizers is ongoing. The agency will provide additional information as it becomes available.”

Although anyone using these products on their hands is at risk for methanol poisoning, young children who accidentally ingest these products, and adolescents and adults who drink these products as an alcohol (ethanol) substitute are most at risk.

Products tested by the FDA and identified as containing methanol include:

- Blumen Clear Advanced Hand Sanitizer with 70% Alcohol
- Blumen Advanced Instant Hand Sanitizer Clear Ethyl Alcohol 70%
- BLUMEN Advanced Instant Hand Sanitizer Clear with NDC codes 60599-015-00, 60599-015-01 and 60599-015-02

Substantial methanol exposure can result in nausea, vomiting, headache, blurred vision, permanent blindness, seizures, coma, permanent damage to the nervous system or death.

Consumers who have been exposed to hand sanitizer containing methanol and are experiencing symptoms should seek immediate treatment for potential reversal of toxic effects of methanol poisoning.

The FDA encourages health-care professionals, consumers and patients to report adverse events or quality problems experienced with the use of hand sanitizers to FDA's [MedWatch Adverse Event Reporting](#) program.

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Newsday

<https://www.newsday.com/business/new-york-american-water-public-service-commission-1.46974477>

State extends time for proposals for public takeover of NY American Water

By Mark Harrington

July 17, 2020

The Public Service Commission on Thursday extended until Oct. 15 the period for municipalities and authorities to submit plans for a possible public takeover of all or part of the New York American Water.

The move gives breathing room for several municipal entities to further assess or solidify plans to take over parts of the privately owned water system. New York American Water had expected to finalize its \$607 million sale to Liberty Utilities by the "latter half" of 2020.

Several ratepayer and advocacy groups had requested an extension, noting that efforts to municipalize are under review or are being pursued by several groups, including the Massapequa Water District and the Village of Sea Cliff, which requested the extension.

The unexpected sale of New York American Water, which includes about 120,000 customers in Nassau County, follows years of ratepayer revolt over the company's spiking customer bills and state investigations of rate-case irregularities by the company.

In extending the deadline for proposals beyond its initial Aug. 3 date, the PSC denied New York American Water and Liberty Utilities' request to limit further deadline extensions, to comment on the state's request for takeover proposals.

In requesting the extension, the ratepayer group North Shore Concerned Citizens, which has advocated for a joining of the Sea Cliff district with the Jericho Water District, (currently under a feasibility study), also noted overtures about a possible takeover by the Suffolk County Water Authority and Hempstead Town.

In a statement, Suffolk County Water Authority Chief Executive Jeffrey Szabo said State Sen. John Brooks "has approached the Authority about taking over New York American Water. However, at this point we haven't been provided enough information to comment further."

Hempstead Town spokesman Greg Blower said the town is reviewing previous studies it commissioned to examine the prospect of taking the water system public.

"While two separate studies did not indicate meaningful rate cost savings could be achieved, the Town of Hempstead is taking another look at the most recent study, which was conducted in 2016, with an open mind," he said. "At the end of the day, the overriding consideration remains whether a public takeover of this water company can provide genuine ratepayer relief."

A spokesman for New York American Water reiterated a previous company statement saying the "fastest path to rate relief for our customers is addressing the property tax burden, not saddling customers with additional taxes to pay for a public takeover."

David Denenberg, a co-director of consumer advocacy group Long Island Clean Air, Water & Soil, disagreed.

"New York American Water saddles us with record profits for its shareholders and 100 percent of their tax burden while providing substandard service," he said. "A public takeover is the only solution."

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NATIONAL

Spending package with Interior-EPA bill on the floor this week

<https://www.eenews.net/eedaily/stories/1063593139/search?keyword=EPA>

[George Cahlink](#), E&E News reporter

Published: Monday, July 20, 2020

House Appropriations Chairwoman Nita Lowey (D-N.Y.) and ranking member Kay Granger (R-Texas) during recent spending bill markups. Francis Chung/E&E News

House Democrats are expected to approve their first package of fiscal 2021 spending bills this week, including one aimed at outlining environmental and land policies for a potential Biden administration.

The House is expected to take up a four-bill package of spending legislation, known as a minibuss, beginning Thursday with the Rules Committee set to decide what amendments will get votes earlier this week.

The minibus will contain the fiscal 2021 Interior-Environment, State-Foreign Operations, Agriculture and Military-Construction-Veterans bills.

The Interior-Environmental measure proposes \$13.83 billion, which is \$304 million above what was allocated for fiscal 2020 and \$1.8 billion beyond the administration's request. That's in line with tight spending caps that Congress agreed to last year.

The legislation contains some pro-environment policy provisions and would also bar Confederate commemorative works on National Park Service land (*Greenwire*, July 10).

"House Democrats reject the dangerous anti-science policies and funding cuts proposed by the Trump administration. Instead, we are focused on protecting the environment and keeping our communities safe and healthy," said House Appropriations Chairwoman Nita Lowey (D-N.Y.) last week.

The Rules Committee is expected to only allow floor votes on a handful of amendments to the minibus, in hopes of having it pass by the end of the week.

A fight over Confederate symbols derailed the bill in 2015, but a floor fight is seen as less likely this time around amid nationwide calls for racial justice.

While Democrats successfully increased some environmental and land agency spending for fiscal 2020, this year the bill is far more aggressive in proposing billions of dollars in emergency spending beyond the caps.

The measure, for example, seeks \$15 billion in emergency spending that would include around \$10 billion for EPA's Clean and Drinking Water State Resolving Fund grants and \$1 billion for the Superfund program.

Democrats have been pushing bills with provisions that may come up in infrastructure or COVID-19 dealmaking, but the GOP-controlled Senate is likely to balk. Still, the language offers clues about Democrats' intentions if they take over the Capitol and White House next year.

Presumptive Democratic presidential nominee Joe Biden last week called for massive new federal spending to fight climate change that would build on many priorities of House Democrats (*E&E News PM*, July 14).

The bill's Interior funding would also signal areas where Democrats hope to reverse Trump policies under a Biden White House.

The legislation would seek more spending for conservation of the sage grouse on Western lands and lay down strict prohibitions on drilling on federal lands and offshore, provisions that will face White House and Senate GOP opposition.

Environmental groups have applauded the efforts, praising both the additional spending and restrictive riders.

But EPA Administrator Andrew Wheeler last week said he would recommend the president veto the legislation, which he warned would undo "commonsense" regulatory changes (*Greenwire*, July 9).

"The House majority is trying to score political points instead of putting forward a realistic appropriations bill," Wheeler said.

Other bills

The House Appropriations Committee approved all its spending bills earlier this month. The three other measure in the first package to hit the floor are:

- The State and Foreign Operations bill would spend \$47.9 billion overall, about a \$1.2 billion increase over fiscal 2020 levels. It would allow a \$500 million carve-out for an "international fund to assist developing nations to reduce greenhouse gas emissions and pursue adaptation and mitigation strategies" (*E&E News PM*, July 9).
- The Agriculture bill would spend \$24 billion, an increase of \$487 million over fiscal 2020 levels. Programs such as agricultural research would see increases, and the legislation would temporarily block a Trump administration plan to speed production in poultry facilities (*E&E News PM*, July 9).
- The Military Construction and Veterans Affairs bill would spend \$102.6 billion, which includes \$200 million for cleanup of per- and polyfluoroalkyl substances, or PFAS, part of a \$581 million package for Base Realignment and Closure (*E&E Daily*, July 6).

Early amendments

Several amendments have already been proposed for House floor debate to the Interior-Environment section of the minibus. Those include:

- An amendment from Rep. Jared Huffman (D-Calif.) that would bar spending any money on oil and gas leasing in the Arctic National Wildlife Refuge.
- An amendment from Rep. Paul Gosar (R-Ariz.) that would codify a Trump administration executive order to speed up environmental permitting for infrastructure projects.
- An amendment from Rep. Jason Smith (R-Mo.) that would prohibit the regulation of lead in ammunition and fishing tackle under the Toxic and Substance Control Act.

The House hopes to approve its eight remaining spending bills, including the Energy-Water plan, before leaving for August recess early next month.

The Senate, meanwhile, has yet to mark up any spending bills, amid an impasse over a truce to limit policy provisions.

Congress is unlikely to have many spending bills signed into law before the new fiscal year begins on Oct. 1. As a result, lawmakers will have to pass a stopgap measure, known as a continuing resolution, to keep agencies funded at current levels and avert a shutdown.

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Congress Returns To Packed Agenda On PFAS Controls, Funding Measures

<https://insideepa.com/tsca-week-ahead/congress-returns-packed-agenda-pfas-controls-funding-measures>

July 20, 2020

Lawmakers return from recess this week with both chambers expected to take up defense authorization bills for fiscal year 2021 that lawmakers are seeking to use as legislative vehicles for amendments that seek to regulate per- and polyfluoroalkyl substances (PFAS). Among them is a House amendment that seeks to bar EPA from approving new PFAS under the Toxic Substances Control Act (TSCA) while both the House and Senate will consider amendments barring Pentagon purchases of certain products containing PFAS.

In addition, the House majority has slated votes on a series of “minibus” spending bills for EPA and other agencies in FY21 that also include PFAS provisions, along with other language seeking to bolster a key EPA chemical risk assessment program as well as the agency’s environmental justice work.

Minibus Funding Bills

House Democrats have unveiled the details of a four-part appropriations “minibus” that includes \$9.38 billion for EPA in FY21, a significant increase above the Trump administration’s request. Of that, the bill allocates \$12.9 million in additional funding for scientific and regulatory work on PFAS to establish drinking water and cleanup standards. “This funding builds on the \$39 million increase the EPA received in 2020,” the House Majority Leader’s office said **in a July 16 statement**.

The bill also **ends funding advances** for EPA’s TSCA program that appropriators have previously provided, putting new pressure on industry to pay fees that help cover the costs of the agency’s upcoming risk evaluations.

Report language attached to the bill also seeks to restore the agency’s once-influential Integrated Risk Information System (IRIS) chemical assessment program, and raises concerns the agency is not doing enough to ban asbestos under TSCA. Overall, the report directs EPA to boost funding for chemical safety and sustainability research to \$130.8 million, a \$4.5 million increase over the FY20 enacted level and some \$39 million above President Trump’s request.

National Defense Authorization Act & PFAS

In the Senate, the chamber resumes floor consideration of the fiscal year 2021 National Defense Authorization Act (NDAA) with **an amendment** offered by Sens. Richard Blumenthal (D-CT) and Jeanne Shaheen (D-NH) that would ban the Defense Logistics Agency from purchasing PFAS-containing products. Senators filed multiple amendments for the NDAA prior to the July 4th recess, with floor debate and votes expected possibly this week. Last year’s NDAA included a mandate for EPA to issue a TSCA significant new use rule for PFAS by June 22, **a deadline that was met by the agency**.

Meanwhile the House is expected to take up its version of the NDAA in the coming weeks, which already includes a number of PFAS provisions. But the bill will also drive debates on a host of **additional amendments** to address the chemicals. Key among them is a measure offered by Rep. Debbie Dingell (D-MI) and a bipartisan group of lawmakers that seeks to bar EPA from approving new PFAS uses under TSCA for at least five years. Other amendments seek to block DLA from purchasing products containing PFAS and expanded requirements for Pentagon testing of PFAS blood-levels in military firefighters.

Non-Animal Testing

The international Toxicology Forum July 20 hosts **the first of a series of three webinars** that will address “Strategies to Use Nonanimal Approaches in Food Safety Assessment.” According to the event webpage: “This session will examine non-animal techniques currently used in the evaluation of food ingredient safety and emerging techniques that may soon be more broadly accessible to the food industry. The session will also explore mechanisms to manage and evaluate these new data in the current regulatory environment, and stimulate discussion between different toxicology disciplines in order to identify key areas and actions that

could be taken within the food industry to lead to more efficient adoption of non-animal approaches to safety assessment.”

The later webinar sessions in August will focus on “Linear Low-Dose Extrapolation and the Biology of Cancer in the 21st Century” and “Applying New Approach Methodologies to Risk Assessment: Consideration of Exposure and Compensatory Mechanisms.”

TSCA Systematic Review

The National Academy of Science on July 23 **resumes its examination** of EPA’s systematic review guidance for TSCA risk evaluations, a review that was insisted on by Senate Democrats.

The upcoming virtual meeting will include presentations by EPA deputy toxics chief Stan Barone and Eva Wong of the risk evaluation division at the Office of Chemical Safety and Pollution Prevention.

At the NAS panel’s last meeting on June 19 members grappled with the agency’s evolving approach to the issue and **asked EPA officials for clarification** on what the agency wants the group to review.

EPA **announced in December** that it had contracted with NAS to peer review its June 2018 document, “*Application of Systematic Review in TSCA Risk Evaluations*,” as well as other public information that may inform the academy’s review.

Children’s Health

EPA Children’s Health Protection Advisory Committee will meet virtually on July 24-27, the group’s **first gathering** since the Trump administration added new members to the 28-member body. An agenda for **the meeting** has not yet been posted.

Asbestos Abatement

Comments are due July 20 on EPA’s request to the White House Office of Management and Budget to renew “Reporting and Recordkeeping for Asbestos Abatement Worker Protection.” The current information collection request expires on Dec. 31. The information collection covers reporting and recordkeeping requirements associated with EPA’s “Asbestos Worker Protection Rule” which establishes workplace standards for the protection of state and local government employees who work with asbestos and who are not covered by a state plan approved by the Occupational Safety and Health Administration, according to **EPA’s notice**. The renewal request was submitted to OMB under the Paperwork Reduction Act.

Formaldehyde Reporting Rule

Comments are due July 23 on **EPA’s plan** to renew reporting requirements for third-parties who certify compliance to formaldehyde emission standards under TSCA by manufacturers and importers. These third-party certifiers (TPC) and accreditation bodies (ABs) “must submit initial applications for recognition and update those applications every three and two years respectively using the Agency’s Central Data Exchange (CDX) system. In addition, ABs and TPCs must submit annual reports which relay certain information to the Agency on the TSCA Title VI certification and testing activities both ABs and TPCs have performed over the last year,” according to **EPA’s notice to renew the requirements**.

Low-Dose Radiation

The National Academy of Sciences, Engineering and Medicine on July 22 is hosting the first in a series of webinars on low-dose radiation, with this week’s session focused on “the Department of Energy Low Dose Radiation Program,” **according to the event webpage**. Presenters include EPA’s R. Julian Preston who will

discuss the National Council on Radiation Protection and Measurements' report on "Approaches for Integrating Radiation Biology and Epidemiology for Enhancing Low Dose Risk Assessment."

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EPA: McLouth Steel cleanup 'going very well'

https://www.thenewsherald.com/opinion/epa-mclouth-steel-cleanup-going-very-well/article_1bda3280-c780-11ea-a02a-67d36852252b.html

By Joseph Palamara

Long awaited but unmistakable signs of significant progress at the former McLouth Steel site have been occurring — some obvious and others less so. This column will report on developments both observable from West Jefferson, and others less apparent; as well as on what the future may hold for this site and other waterfront industrial sites in Trenton.

As longtime Downriver residents can attest, the blighted and vacant former McLouth Steel site had been an eyesore for over 20 years. More importantly, it has been an environmental hazard in dire need of remediation.

To briefly review history, after the unpaid tax foreclosure process unfolded a few years ago, a new owner/developer was sought to tear down the blighted structures and clean up the land. With the overwhelming support and approval of the late, great Trenton Mayor Kyle Stack and Trenton city officials, a new owner/developer was selected to pay the millions due in back taxes and interest to purchase the property from the Wayne County Land Bank.

An agreement between the new owner, EPA and Michigan EGLE required that the buildings be demolished, the land cleaned up and then, pending city of Trenton approval, the property would be redeveloped. The minimum investment costs for the owner were to be at least \$20 million.

So far, acquisition costs and the cleanup alone have cost well over \$20 million, and were it not for the COVID-19 pandemic, the entire demolition and clean up would most likely have already been completed. Driving by the site now, observers can witness firsthand the tremendous amount of tear down, remediation and cleanup work that has already been accomplished — 44 of the 45 structures have been demolished with removal of materials containing asbestos, PCBs and other waste.

Brian Kelly, the EPA's on-scene coordinator of the cleanup project, has publicly stated that "the cleanup is going very well" and that the owners and contractors cleaning up the site "are doing exceptional work" in remediating the site. Once the remediation is completed, increased attention will be placed on the redevelopment phase.

Simultaneously, this Wednesday, the City of Trenton Planning Commission will meet via Zoom teleconferencing at 7 p.m. to review and hear comments on the proposed revised zoning ordinance and zoning map. These plans have been under consideration for years, even before the foreclosure of the McLouth property.

This proposed revised zoning ordinance, over 200 pages in length, and zoning map, can be found [on the city's website](#). One of the revised zoning designations is called the Waterfront Industrial District (WID), and its description can be found on pages 98–102 of the proposed ordinance. More importantly, what would and what would not be allowed in a WID is spelled out in great detail on those four pages.

The two largest parcels that the proposed WID would apply to are the former McLouth Steel site, now known as the MSC Land Co. and Crown Enterprises site, and the Trenton Channel DTE Energy power plant site. The waterfront DTE Energy site is set to be decommissioned and shut down by May 2022.

Amid the discussion about possible future uses of the McLouth site, misinformation unfortunately has been circulating. However, at no time during the selection process by the city of Trenton did any entity come forward with a proposal to pay the tens of millions in back taxes and remediation costs and then turn the site into a public park with complete public access. That was never a realistic option that was put forth by anybody.

It is my understanding, however, that the current owners are seriously considering implementing a portion of the site that would allow and permit public access to the waterfront. I encourage them to do precisely that, and in my opinion, the larger that area, the better.

Which leads to my last point. For years, the city of Trenton has been a pillar community in the Downriver area. Trenton has had outstanding public servants who have made decisions with the best interests of its residents first and foremost in their minds. Before any redevelopment can take place at either the soon to be former DTE site or the former McLouth Steel site, Trenton city officials will have to approve specific site plans for those properties.

That is an unmistakable and important fact that cannot be ignored, twisted or misrepresented to advance anyone's personal, political agenda.

It is well known, well documented and indisputable, that Trenton city officials care a great deal about their community and its residents. When the final decisions are made by Trenton officials on how to best zone their city, balance their tax base and approve site plans for specific parcels, I have no doubt that the compass will be focused on what is in "the best interests of the city of Trenton and its residents" as a whole.

Joseph Palamara (D-Grosse Ile) is the Wayne County commissioner for the 15th District.

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Closing a Concocted Clean Water Act Loophole

<https://www.theregreview.org/2020/07/20/devine-henkin-closing-concocted-clean-water-act-loophole/>

By: [Jon Devine](#) and [David Henkin](#)

In *County of Maui v. Hawaii Wildlife Fund*, the U.S. Supreme Court put to rest the claim that polluters can evade the Clean Water Act—the principal federal law regulating water pollution— simply by using groundwater as a sewer to convey pollutants to our nation's rivers, lakes, and oceans.

Maui County had intentionally designed injection wells at its Lahaina wastewater treatment plant to dispose of millions of gallons of partially treated sewage each day by injecting the wastewater into groundwater beneath the facility, knowing that the wastewater would flow with groundwater into the Pacific Ocean. Maui County and the Trump Administration, backed by a rogue's gallery of polluting industries, argued that polluters can dump wastewater into surface waters with impunity, as long as their pollution travels through groundwater—even for only "two inches"—on its way to surface water.

The Court's refusal to eviscerate a key safeguard in the Clean Water Act reflects a welcome, and precisely correct, focus on applying the plain text of the law consistent with the U.S. Congress's clear intent in enacting it.

The Clean Water Act's sole objective is to "restore and maintain the ... integrity of the Nation's waters." One of the key ways to accomplish that objective is to require a facility owner or operator to obtain a National Pollutant Discharge Elimination System (NPDES) permit for "any addition of any pollutant to navigable waters from any point source."

Based on this plain language and congressional intent, the question before the Supreme Court in this case—namely, whether the law exempts from the permit requirement a discharge originating out of a facility pipe or other point source solely because it passes through groundwater—should be straightforward.

Yet the Trump Administration, in a move that reversed decades of prior U.S. Environmental Protection Agency (EPA) practice under both Republican and Democratic administrations, issued an interpretive statement in April 2019 declaring that the permit obligation does not apply to discharges via groundwater. EPA justified this exclusion by claiming that the Clean Water Act's regulatory safeguards do not typically apply to groundwater. The agency had previously rejected—in prior litigation of the *County of Maui* case, no less—such an argument as a red herring. Specifically, in a brief to the U.S. Court of Appeals for the Ninth Circuit, EPA regarded the Act's treatment of groundwater pollution as "beside the point" in cases involving pollution that reaches surface waters routinely covered by the Clean Water Act.

According to the Court, the key statutory interpretation question came down to whether a discharge that travels via groundwater into surface water should be considered an addition of pollutants "from" the original point source. The Court found that common usage of the word "from," reinforced by the remedial context of the Clean Water Act, readily supports such a reading when the discharge in question is the "*functional equivalent of a direct discharge*."

The Court rejected the Trump Administration's newly minted interpretation—that the addition of a pollutant into groundwater before it is added to surface water alleviates NPDES permitting requirements—because its practical consequences would fundamentally undercut the Clean Water Act's language and objective. As Justice Stephen Breyer, writing for the six-justice majority, noted about the government's theory:

If that is the correct interpretation of the statute, then why could not the pipe's owner, seeking to avoid the permit requirement, simply move the pipe back, perhaps only a few yards, so that the pollution must travel through at least some groundwater before reaching the sea? We do not see how Congress could have intended to create such a large and obvious loophole in one of the key regulatory innovations of the Clean Water Act.

Furthermore, the Court's holding necessarily rejected an even more sweeping exemption advocated by Maui County and adopted by the U.S. Court of Appeals for the Sixth Circuit in 2018, which would require permits for discharges only when the polluting facility's pipe or other point source extends all the way into the surface water body.

Justice Breyer's opinion therefore respects the choices Congress made to adopt a tough law that would control pollution at the source and hold polluters accountable when they seek to evade its requirements.

At the same time, the Court recognized that the Clean Water Act is neither draconian nor unreasonably burdensome, despite some parties' claims that the mere potential for stiff civil penalties militates in favor of a narrow interpretation of the NPDES permit requirement.

The Court, however, correctly observed that Congress drafted the Clean Water Act to guard against unfair enforcement, reserving harsh penalties for scofflaws and expressly giving judges the discretion to account for

good faith efforts to follow the law. In support of this proposition, the Court referred to Section 1319(d) of the statute, which directs judges assessing Clean Water Act penalties to consider factors such as the seriousness of a violation and good faith efforts to comply with the Act's requirements, as well as "such other matters as justice may require."

The majority also dismissed claims that complying with Congress's command to protect our nation's waters imposes too great a regulatory burden, noting that EPA and states that administer the Act can "mitigate those harms," for example by "developing general permits for recurring situations."

At oral argument, Justice Sonia Sotomayor pointedly asked how Maui County is "getting away with" polluting the ocean, noting that "something failed" in the Clean Water Act's application and enforcement in this case. The Court's balanced approach in resolving *County of Maui v. Hawaii Wildlife Fund* provides hope that lower courts will decide future Clean Water Act cases consistent with Congress's words and purpose—and will not be swayed by overblown rhetoric from polluters wishing to dodge responsibility for keeping the nation's waters healthy.

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Sen. Feinstein urges HHS, EPA to implement COVID-19 wastewater surveillance program

<https://homelandprepnews.com/stories/52553-sen-feinstein-urges-hhs-epa-to-implement-covid-19-wastewater-surveillance-program/>

Monday, July 20, 2020 by [Dave Kovaleski](#)

U.S. Sen. Dianne Feinstein (D-CA) is calling on the Department of Health and Human Services (HHS) and the Environmental Protection Agency (EPA) to develop and implement a COVID-19 wastewater surveillance program.

Testing wastewater has been proven as a successful method to detect viruses and diseases. Communities in California, Massachusetts, and Arizona have already started exploring this approach in partnership with universities and the Centers for Disease Control and Prevention in response to the COVID-19 pandemic. Also, wastewater surveillance has already been implemented in several other countries, Feinstein said, including Finland, Germany, and the Netherlands.

"Effective wastewater surveillance holds the potential to detect an outbreak in a community up to a week before people start showing up in the hospital," Feinstein wrote in a letter to HHS Secretary Alex Azar and EPA Secretary Andrew Wheeler. "This advanced warning would allow all levels of government to preposition medical supplies, shore up hospitals in the affected community, and begin locking down the area. Given surging caseloads in many states, it is clear that the United States needs to find innovative ways to get ahead of the curve, and I urge you to prioritize funding to implement nationwide wastewater surveillance efforts related to COVID-19."

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COVID-19 Impacts in Massachusetts: Massachusetts State and Federal Courthouses Re-Open In Phased Approach

<https://www.jdsupra.com/legalnews/covid-19-impacts-in-massachusetts-37253/>

By: Beveridge and Diamond

July 20, 2020

Update Highlights:

- The Massachusetts District Court for the District of Massachusetts has released an Order allowing for renewed in-person proceedings in limited cases.
- The Supreme Judicial Court issued new orders last week spelling out the logistics for public attendance at courthouses set to reopen on July 13. Members of the public will be subject to screening, including temperature checks, and will be barred from entry if they fail to wear a mask or fall into high-risk categories such as a COVID-19 diagnosis, living with someone with COVID-19, or awaiting test results for the disease.
- The high court also made clear that the administration of oaths and affirmations of witnesses may be done remotely, addressing an ambiguity complicating virtual hearings.

This and other updates on the Commonwealth's response are collected on its [website](#) and the separate [court system site](#). Beveridge & Diamond's [COVID-19 EH&S Resource Center](#) is available as we work remotely throughout our seven offices, covering matters around the country and throughout the world. Here we review impacts to clients with pending matters in the state and federal courts, ongoing business operations in the Commonwealth, enforcement considerations, and environmental compliance deadlines.

Massachusetts Reopening Plan

Boston joined the rest of the Commonwealth in Phase 3 of its four-phase reopening plan on July 13, pursuant to Governor Baker's [COVID-19 Order No. 43](#). Following the [declaration of a state of emergency](#) on March 10, 2020, and a [series of orders](#) that closed non-essential businesses, advised residents to stay at home, and prohibited gatherings of more than 10 people (actions that effectively shut the Commonwealth down for two months), Governor Baker issued a comprehensive plan to open the Massachusetts economy on May 18, 2020. The plan contains four sequenced phases, as described in the Administration's "[Reopening MA Report](#)." This report provides detail on allowed commercial activities in each of the phases, which are called "start", "cautious", "vigilant" and "new normal."

Citing public health data that indicates some public health successes in Massachusetts, despite surging virus cases in more than half of the other states, Phase 3 commenced on July 6 including the reopening of fitness centers and health clubs, museums and aquariums, movie theaters and performance halls (at limited capacity), and casinos with limitations. The Phase 3 start date in the City of Boston was slightly delayed, and began on July 13. A list of which business can re-open during each phase, and under what restrictions, [is maintained here](#).

Each re-opening phase is expected to last approximately three weeks, but the duration depends on COVID-19 public health data trends. As such, and given the potential for changes to that timeline or reversals, businesses should closely monitor the Commonwealth's "[Reopening Massachusetts](#)" website for additional updates.

Public schools remained closed through the duration of the school year, with most childcare facilities also closed through the end of June. The Massachusetts Department of Elementary and Secondary Education (“DESE”) released its “Initial Fall Reopening Guidance” memo on June 25, which outlines various parameters that will govern Fall 2020 reopening plans for schools. Teachers unions in Massachusetts have begun negotiating with DESE regarding specific school re-opening plans, which remain in flux, District-specific, and subject to debate.

State Courts

State Courts Began Reopening on July 13. Through a series of orders that updated the original closures and restrictions, the SJC previously closed the state courts to the public except to address emergency matters that cannot be resolved through videoconference or telephone hearing, through at least July 1, 2020. On June 25, the SJC issued its “Third Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (coronavirus) Pandemic.” This latest order re-opened state courthouses beginning on July 13, under a phased approach.

The SJC’s order directs trial courts to determine what matters they will begin to hear in person on July 13, and to further expand in-person hearings beginning on August 10. The order directs courts to first prioritize emergency matters, then scheduled in-person proceedings (including bench trials), with additional categories lower on the priority list for entry into courthouses. The order identifies which individuals may access courts under the reopening plan. The order also permits cell phones and other devices in courtrooms given increased reliance on electronic information to facilitate communications and proceedings during the pandemic.

The SJC spelled out more of the logistics of the reopening in its Second Order Regarding Public Access to State Courthouses & Court Facilities, became effective on July 13 and replaces its March 13 order. The Second Order details categories of people prohibited from accessing courthouses, including people who have tested positive for COVID-19, are experiencing symptoms, are awaiting test results, have been advised to self-quarantine by a doctor, or who refuse to submit to courthouse screening and wear a mask. Screening will include questions regarding these categories and a non-contact temperature test. The order provides instructions to be followed by anyone prohibited from accessing the courthouse as a result of these rules, which largely entail contacting clerk’s offices. The Second Order further requires face masks and physical distancing inside the building as well as a directive to follow markings on the floor as guidance.

Civil Cases are Unstuck as Tolling of Civil Statutes of Limitation and Court Deadlines Ends. Civil cases that have been effectively stuck since the courthouse closures will benefit from the opening of courthouses, continued virtual court business, and the SJC’s June 25 order reaffirming that tolling of civil statutes of limitations will cease on June 30, and that those deadlines “will not be tolled any further unless there is a new surge in COVID-19 cases in the Commonwealth and the SJC determines that a new or extended period of tolling is needed.” Criminal statutes of limitation are tolled through September 14, due to the lack of grand jury availability. The SJC reiterated explicit instructions about how the new deadlines are to be calculated.

The SJC also eased the utilization of virtual proceedings by explicitly authorizing the administration of oaths and affirmations of witnesses remotely, suspending any rules that would have required such oaths to be administered in person.

Jury Trials Delayed Until at Least September; Bench Trials May Begin Sooner and/or Virtually. While bench trials resumed beginning on July 13, jury trials in both civil and criminal cases scheduled through September 4 are continued to no earlier than September 8, 2020. For any in-progress trial at the time of the courthouse closure, a mistrial was declared.

Electronic Service Now Permitted in Many Instances. Parties in civil cases may use email for service of most pleadings under Mass R. Civil P.5(b) where the email addresses of the lawyers have been disclosed in previous filings with the court. The SJC's order on March 30 cautioned attorneys that they must periodically check spam and quarantine folders to make sure they have not missed an email, but prohibited email service for summons and complaint, attachment, trustee process, third-party complaints, and subpoenas. This means that ongoing civil litigation is the main beneficiary of these rules, as new complaints, third-party complaints, and other more complicated matters will continue to require traditional service consistent with the additional consequences associated with those matters. In addition, pro se litigants cannot be served by email unless they assent.

Electronic Signatures. The SJC issued an order permitting the use of electronic signatures in Massachusetts Courts effective April 7, 2020. The order applies to "all courts and case types" and to attorneys and self-represented parties alike. Electronic signatures may take the form of a scanned signature, an image representing the signature, or a "/s/ name of signatory" block (as is common practice in federal courts). Following the order, electronic signatures are permitted in all Massachusetts courts "unless the court specifically orders otherwise." Electronic signatures also are acceptable for affidavits made under oath, although the party must make efforts to secure an original signature as soon as practicable after filing with the court.

Virtual Oral Arguments and Tolling at SJC and Appeals Court. Although all arguments at the Appeals Court in April were deemed submitted on the briefs on file without any oral argument unless otherwise ordered by the Court, after a pilot test in April, the Appeals Court has begun holding oral arguments by Zoom video conference with a live stream to the Appeals Court's YouTube channel. In the Appeals Court's May 26, 2020 Administrative Order 20-1, the Appeals Court extended virtual arguments through July, while noting that the courthouse is closed through June 1, and will likely remain closed through the end of June. In a separate Administrative Order 20-2 issued on the same day, the Appeals Court made explicit the tolling of deadlines for notices of appeal and other internal Appeals Court submission deadlines. The Appeals Court set new deadlines for notices of appeal and statutory deadlines based on SJC's order of May 26, while setting three filing deadlines for briefs delayed by the tolling, based on the original applicable deadline. Notably, there is no change for briefs and appendices due on or after June 1, 2020, which means that litigants in such cases will need to adhere to their current schedules barring any further orders. Other court deadlines that would expire between March 17 and May 31 were extended to June 15, 2020, but that deadline has now passed. The SJC will also be holding oral arguments by video conference with public access available.

Trial Court Helpline. The Trial Court has established a help line that the public and attorneys can call to ask general questions about civil and criminal cases and help them navigate the court system while it is experiencing COVID-19 disruptions. The Help Line is staffed from 8:30 a.m. to 4:30 p.m., Monday through Friday, and can be reached by calling 833-91COURT. For emergency matters, the Trial Court has directed that litigants and lawyers should call the clerk or register office at the court. Court contacts are located on the Courthouse Locator page available here.

Federal Courts

Federal Courts are Open With Restrictions. The Federal District Court for the District of Massachusetts remains open with restrictions on visitors and limited counter hours for clerks (9 a.m. to 2 pm). By the Court's General Order 20-21, all jury trials scheduled to begin before September 8 are postponed pending further order of the court. In order to keep the work on the court moving, judges have pivoted to holding hearings and conferences by telephone and video and issued a public notice regarding public access to these teleconferences and videoconference hearings. On July 15, the Court issued General Order 20-31 that modifies the Court's prior COVID-19 orders and paves the way for increased in-person proceedings in the District Court. Under the Order, the Court expects to conduct "a limited number of in-

person, non-jury proceedings,” with specific protections in place, including social distancing in courtrooms and a mask requirement for all participants, except for witnesses under oath who will testify behind a Plexiglass screen. A mandatory health screening self-assessment also is required before visiting the Court. While most hearings and other matters will continue to be heard virtually, certain non-jury proceedings may be scheduled in-person in cases where “(1) further delay may harm the interests of justice and (2) the law does not permit video proceedings or the requisite consents cannot be obtained.” The Court does not expressly define such cases, but they may include a range of civil and criminal cases where prompt proceedings are necessary. **First Circuit Court of Appeals Extends Deadlines But Not for Filing of Appeals.** Following the cancellation of the April sitting of the First Circuit Court of Appeals, this court too is holding oral arguments by video conference through the June session. In an explanation on its website, the First Circuit provided a link to its YouTube channel for live viewing and its archive of audio recordings of arguments. The court also suspended its requirement that appendices to brief be filed only in paper form, while anticipating paper filings at a later date. The clerk’s office is not accepting in-person filings and filers are directed to use the first-floor drop-box.

Local Governments

Cities and towns have taken a variety of steps to confront the coronavirus in their municipalities that will interrupt day-to-day business in a variety of ways, including slowing permitting, responses to public record requests, and ongoing discussions on subjects outside the current crisis. Municipalities have declared states of emergency, closed town and city halls, and postponed municipal board and committee meetings. As towns begin to hold town meetings, some are doing so outdoors or in large open spaces, while limiting in-person public access in some cases and facilitating public participation by virtual means.

On April 3, the Governor signed legislation that addressed constructive approvals, scheduling and continuance of annual town meetings, implementation of budgets, and other time-sensitive financial issues. Paralleling the extensions for state permits and appeals, the legislation allows local hearings to be continued during the state of emergency, although there is language that appears to provide boards and committees the discretion to hold virtual meetings. The legislation:

- Suspends the requirement for a local board to act commence a hearing within a specified period of time as of March 10, 2020 to be resumed 45 days after termination of the state of emergency (or later if provided by statute or rule);
- Suspends constructive approvals when a local board fails to act within specified period of time until 45 days after the state of emergency ends (or later if provided by statute or rule);
- Extends deadlines by which local permit applications are to be heard and acted upon, with that period resuming 45 days after the state of emergency ends (or later if provided by statute or rule);
- Continues all hearings for which a hearing was held before March 10, 2020 but not concluded until the first hearing date of the permit granting authority after the state of emergency ends, but not later than 45 days after the termination of the order; and
- Suspends the time for required recording of local permits or approvals with the Registry of Deeds.

In order to aid municipalities to carry on their business, on March 12, Governor Baker issued an order suspending some provisions of the state’s Open Meeting Law (G.L. c. 30A, § 20). This order eased the requirement to meet in a public place and permitted remote participation by all members of a meeting of a public board or committee provided the public has a way to monitor the proceedings in real time (e.g. telephone, internet, etc.). Where a municipality cannot accomplish real-time participation “due to economic hardship and despite best efforts” the municipality must post the transcript or recording on its website. Based on this order, many municipalities are rescheduling certain town meetings and hearings to occur by video or audio conference. Legislation subsequently codified the governor’s order.

During the public health crisis presented by COVID-19—and the mandatory business closures resulting from it—businesses will need to keep a careful eye on environmental compliance and permitting. Environmental compliance requirements remain in effect, meaning that businesses will need to continue compliance with permits, environmental regulations, and other environmental requirements that apply to their operations.

Massachusetts and MassDEP

As of the date of this publication, the Massachusetts Department of Environmental Protection (MassDEP) has not issued broad guidance or policy updates regarding environmental compliance, enforcement, or flexibility mechanisms related to challenges presented by COVID-19. On a webinar on March 31, MassDEP Commissioner Marty Suuberg said that he did not expect to issue a document similar to US EPA's enforcement memorandum discussed below. Instead, MassDEP has issued a sector-specific FAQ for Public Water Suppliers and Wastewater Service Providers, and has suspended bottle redemption enforcement. But apart from these limited measures MassDEP has not yet provided guidance or altered compliance requirements. A list of COVID-19 Guidance and Directives issued by state agencies is maintained here; businesses may want to check this page periodically as new items are added on a near-daily basis.

With many government offices closed and staff working remotely, including much of the Massachusetts Department of Environmental Protection (MassDEP), it may be more difficult for some entities to carry out routine permitting and compliance actions. Nonetheless, Massachusetts businesses should assume that environmental compliance and permitting requirements continue to apply.

Through his initial COVID-19 Order No. 17, Governor Baker sought to ease the pressure of permitting and appeal deadlines under the authority of the Executive Office of Energy and Environmental Affairs and the Executive Office of Housing and Economic Development. On July 2, the governor issued COVID-19 Order No. 42, which rescinded Order No. 17 and restarted permitting and appeal deadlines:

- **Constructive approvals or denials** (defined as those approvals or denials that take effect if the state does not act within a specified time) that would have issued between March 10 and July 1 but were suspended under Order No. 17 are now deemed to be issued on August 17, 2020 unless the state permitting agency otherwise acts before that date.
- **Hearings** that a state permitting agency would have been required to begin between March 10 and July 1 but were suspended under Order No. 17 are required to commence on or before August 10, 2020.
- **Decisions and requests** that a state permitting agency would have been required to issue or make between March 10 and July 1 but were suspended under Order No. 17 must be issued by the permitting agency on or before August 10, 2020.
- **Appeal rights** of any person aggrieved by an appealable state permitting decision that would have expired between March 10 and July 1 but were suspended under Order No. 17 are extended to August 10, 2020. Any appeal right that expires after July 1, 2020 must be exercised by the regular deadline or by August 10, 2020, whichever is later.
- **Expiration dates of state permits remain tolled** during the state of emergency. Any permitting approval valid as of March 10, 2020 will not expire during the state of emergency, and the new expiration date for such an approval will be calculated by determining how many days remained in the permit effectiveness as of March 10 and adding that number of days to the date of the eventual termination of the state of emergency. This tolling protection is not extended to permit holders who were in violation of their permits as of March 10.

Following the filing of several law suits by environmental advocacy groups and a coalition of states, EPA announced plans to terminate guidance it had issued on March 26, 2020 entitled: “COVID-19 Implications for EPA’s Enforcement and Compliance Assurance Program,” with the termination effective August 31, 2020.

EPA’s guidance addresses a range of issues relating to environmental enforcement and compliance and COVID-19. EPA warned in a June 29 memo that it “may terminate this temporary policy (i.e., indicate it does not apply to future noncompliance) on a state or national basis, in whole or in part, at any earlier time, taking into account changing conditions in a state or region of the country, including as appropriate the expiration or lifting of “stay at home” orders in a state, the status of federal and/or state COVID-19 public health emergency guidelines, and/or other relevant factors or considerations.” Following termination, EPA indicates that it will no longer base any exercise of enforcement discretion on the temporary policy for any noncompliance that occurs after the termination date.

EPA’s temporary enforcement guidance addresses situations where EPA will apply enforcement discretion to pandemic-related non-compliance, where regulated entities follow the conditions set forth in the policy. Eligibility for the benefits of the policy depends on meeting the articulated conditions, including adequate documentation.

EPA conditions application of its enforcement discretion on a demonstration that all efforts have been made to comply with environmental obligations. Where that is not “reasonably practicable” due to a COVID-19 related reason, documentation is critical. More specifically, EPA’s policy sets forth the following expectations:

- Act responsibly under the circumstances in order to minimize the effects and duration of any noncompliance caused by COVID-19;
- Identify the specific nature and dates of the noncompliance;
- Identify how COVID-19 was the cause of the noncompliance, and the decisions and actions taken in response, including best efforts to comply and steps taken to come into compliance at the earliest opportunity;
- Return to compliance as soon as possible; and
- Document the information, action, or condition.

EPA’s policy, which is retroactive to March 13, 2020, covers the three most common instances of expected non-compliance: civil violations, routine compliance monitoring and reporting, and settlement agreement or consent decree obligations. The policy does not apply to CERCLA or RCRA Corrective Action sites, emergency reporting of accidental releases, pesticide product imports, state or tribal matters, or criminal actions.

Importantly, EPA’s guidance does not relieve or eliminate any compliance obligations or deadlines; rather, it indicates how EPA will take certain enforcement actions in light of COVID-19 impacts. The policy is detailed and, in some instances, nuanced, and we recommend careful assessment to determine whether it may be applicable to your operations. We have published a thorough analysis of EPA’s COVID-19 policy [here](#).

A coalition of environmental advocacy groups filed a lawsuit in April challenging the policy, and in May 13 nine states (New York, California, Illinois, Maryland, Michigan, Minnesota, Oregon, Vermont and Virginia)

filed a similar lawsuit arguing that EPA lacks authority to implement what the lawsuit calls an “effective waiver” of federal environmental law.

Given the impending termination of EPA’s COVID-19 policy, the several pending challenges to the policy, and the potential for increased outside scrutiny, businesses should remain diligent in their environmental compliance efforts and work with counsel to determine how to address any compliance challenges that arise during this period, whether related to COVID-19 or otherwise. EPA’s withdrawal of the guidance may render these challenges moot but the question of an as-applied challenge to actions EPA has taken under the policy is still a possibility.

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EPA press aide moves to White House

<https://www.eenews.net/greenwire/stories/1063598245/search?keyword=EPA>

Kelsey Brugger and Hannah Northey, E&E News reporters

Published: Monday, July 20, 2020

An EPA press office staffer will be heading to the White House Council on Environmental Quality press shop.

Dan Schneider, a former Capitol Hill staffer and White House aide, has left his post at the Council on Environmental Quality and is being replaced by EPA deputy press secretary Andrea Woods.

Schneider announced in an email Friday his last day as associate director at CEQ. Schneider did not say why he left the job or provide details about his plans.

"I'm proud of the work we accomplished at CEQ and it was a privilege to serve President Trump, his Administration, and CEQ Chairman [Mary] Neumayr," he wrote.

His departure comes days after President Trump and CEQ unveiled the final rewrite of the National Environmental Policy Act rules, a centerpiece of the administration's initiative to accelerate major infrastructure development. NEPA requires the government to consider environmental impacts and public input when assessing the construction of projects like pipelines and highways.

Schneider added that he would soon announce his next move. Schneider joined CEQ two years ago after serving as a press aide at the House Energy and Commerce Committee under former chairs Fred Upton (R-Mich.) and Greg Walden (R-Ore.). He first worked on the Hill for Rep. Bill Johnson (R-Ohio) ([Greenwire](#), May 1, 2018).

Woods has been at EPA since August 2019 and is currently on detail to CEQ, according to an agency spokesperson.

Prior to joining EPA, she had been a communications associate at the National Association of Manufacturers since November 2017, according to her LinkedIn page. A 2016 graduate of Boston University, Woods also had

short stints at America Rising, a firm that does opposition research on Democrats, and on the campaign of former Sen. Kelly Ayotte (R-N.H.).

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New York Loses Bid to Stop Waste Dump in Long Island Sound

<https://news.bloomberglaw.com/environment-and-energy/new-york-loses-bid-to-stop-sediment-dump-in-long-island-sound?context=search&index=1>

July 20, 2020, 11:35 AM; Updated: July 20, 2020, 3:20 PM

- Project to allow millions of cubic yards of sediment at site
- EPA backed its approval with ‘substantial evidence’

The EPA’s designation of the eastern Long Island Sound as a open-water dredge disposal site was supported by substantial evidence, and the agency followed proper procedures, a New York federal court ruled in a loss for the state.

New York argued the Environmental Protection Agency violated the Marine Protection, Research, and Sanctuaries Act and the Coastal Zone Management Act when it approved the site designation in 2016. The site will hold an estimated 20 million cubic yards of dredged material.

New York said the agency failed to justify that a new site was needed in the eastern Sound, and it failed to consider vessel traffic in its decision. The agency’s designation was also arbitrary and capricious because it was feasible to use other sites, and the EPA failed to consider the environmental impacts of dredged materials, the state said.

Under the MPRSA, the EPA isn’t required to designate a new site only after showing an existing site lacks capacity, the U.S. District Court for the Eastern District of New York said in its July 17 ruling.

The agency said requiring dredging centers in the Eastern Sound to transport material to other sites would likely make dredging projects too expensive and needed dredging wouldn’t happen. The record “plainly supports that conclusion,” the court said.

New York had no answer to the agency’s argument that its yearly dredging restrictions would ensure work wouldn’t interfere with traffic, the court said. The restrictions would limit dredge disposal at the site to October through April, when ferry traffic is “considerably lower,” and mariners would be alerted when disposal happens, according to the ruling.

The state’s concerns about the cumulative impacts from the project are also premature, the court said. Under the MPRSA and the Clean Water Act, disposals can’t happen until a project-specific review is completed and a required permit or authorization issued. The agency’s guidelines say no permits will be granted if there’s an alternative that would have a less adverse impact, and no discharge that will cause or contribute to water degradation is allowed, the court said.

New York based its CZMA claim largely on the same arguments that the court rejected, according to the ruling. Overall, the state failed to give additional explanations as to how EPA's designation of the site is inconsistent with New York or Long Island's coastal management programs.

An agency spokesperson told Bloomberg Law Monday the court's action will help support the U.S. Navy submarine base and the U.S. Coast Guard Station in Groton and New London, Connecticut—facilities that are “vital to our national security.”

Judge Edward R. Korman issued the opinion.

The New York State Attorney General's Office represented the state. The Department of Justice represented the federal government.

The case is Rosado v. Wheeler, E.D.N.Y., No. 1:17-cv-04843, 7/17/20.

(Adds comment from agency.)

To contact the reporter on this story: in Washington at mearls@bloomberglaw.com

To contact the editors responsible for this story: at rtricchinelli@bloomberglaw.com; at pgregory@bloomberglaw.com

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EPA Inches Closer to Regulating Greenhouse Gases From Airplanes

<https://news.bloomberglaw.com/environment-and-energy/epa-inches-closer-to-regulating-greenhouse-gases-from-airplanes?context=search&index=0>

July 20, 2020, 3:25 PM

- EPA rule would set emissions standards for aircraft
- Critics say standards don't go nearly far enough

An EPA plan to set greenhouse gas emissions standards for aircraft appears to have moved one notch closer to finalization.

The White House's regulatory clearinghouse finished its review of the Environmental Protection Agency's proposed rule, according to a notice published on Monday.

The rule would set emissions standards for certain types of airplanes under the Clean Air Act.

The EPA was required to set those standards after it found in August 2016 that greenhouse gas emissions from certain aircraft elevated concentrations of the greenhouse gases that are the primary cause of climate change. The finding said these gases “endanger the public health and welfare of current and future generations.”

The next step for the EPA is to either issue the rule in final form, withdraw it, or reconsider it based on

the Office of Information and Regulatory Affairs' review. The agency has said it wants to issue the rule in final form sometime this month, adopting domestic standards that conform with the International Civil Aviation Organization's 2017 international guidelines.

Before the coronavirus hit, ICAO said the carbon dioxide emissions created by international aviation were estimated to increase by as much as 69% from 2010 to 2020.

The EPA didn't immediately respond to a request for comment.

'Utterly Abysmal'

Clare Lakewood, senior attorney at the Center for Biological Diversity, said the ICAO standards are "utterly abysmal. Those standards will in no way address greenhouse gas pollution from aircraft in the way that we need them to, if we're to protect ourselves and our communities."

The ICAO standards would reduce carbon dioxide emissions from new aircraft starting in 2028.

But many commercial planes in the U.S., covering more than 80% of aviation demand, already comply with those standards, meaning the ICAO guidelines won't trigger any improvements in efficiency or fuel use, according to Lakewood. Newly delivered aircraft are also expected to exceed the ICAO standards by roughly 10%, she said.

Carter Yang, a spokesman for the industry trade group Airlines for America, said U.S. airlines improved their fuel efficiency by 40% between 2000 and 2019 and "are helping to lead the fight against climate change with a myriad of measures," including developing sustainable alternative jet fuels and investments in more fuel-efficient aircraft.

In 2019, U.S. carriers transported 2.5 million passengers and 58,000 tons of cargo per day while contributing just 2% of the nation's greenhouse gas emissions, Yang said.

In January, the Center for Biological Diversity and Friends of the Earth notified the EPA of their intent to sue the agency for allegedly taking too long to set the emissions standards.

The airline industry has been battered since the coronavirus pandemic began. At its lowest point in late April, passenger volumes were down 96%, hitting levels not seen "since before the dawn of the jet age in the 1950s," Yang said.

Bookings have perked up slightly since then. ATA members' volumes are now down some 74% and carriers are operating 53% fewer flights than a year ago, Yang said. U.S. carriers have also idled 32% of their fleet, he said.

To contact the reporter on this story: Stephen Lee in Washington at stephenlee@bloombergindustry.com

To contact the editors responsible for this story: Gregory Henderson at ghenderson@bloombergindustry.com; Chuck McCutcheon at cmccutcheon@bloombergenvironment.com

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EPA recounts waste management progress in US for 50th anniversary

<https://www.wastetodaymagazine.com/article/epa-recounts-waste-management-progress-50-anniversary/>

According to the EPA, the nation's early efforts in promoting responsible waste management have been very successful at protecting the public from hazardous waste contamination and leaking underground storage tanks.

July 20, 2020

Posted by Haley Rischar

Legislation and regulations Safety

As part of its 50th anniversary celebration, the U.S. Environmental Protection Agency (EPA) has highlighted the progress the nation has made on promoting responsible waste management, preventing contamination from hazardous waste and cleaning up contamination from underground storage tanks.

“As our economy and business practices have evolved, EPA has continued to adapt, innovate and fine tune its solid and hazardous waste regulations,” said EPA Assistant Administrator Peter Wright. “We are committed to working with our state, tribal and territorial partners, in close consultation with communities and the regulated community, to fulfill our important mission.”

“The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) values our partnership with the Environmental Protection Agency (EPA),” said ASTSWMO Executive Director Dania Rodriguez. “As co-regulators, with our federal partners, we strive to protect and improve public health and the environment and look forward to continuing and strengthening our partnership the next 50 years and beyond.”

A major milestone for the EPA in the regulation of solid and hazardous waste was the implementation of the Resource Conservation and Recovery Act (RCRA). Signed into law in 1976, the RCRA set standards for responsible solid waste management and to establish “cradle-to-grave” safeguards for hazardous wastes, from generation, transportation, treatment, storage and disposal.

Today, the RCRA waste management program manages over 2.5 billion tons of solid, industrial and hazardous waste resulting from the manufacturing and use of goods throughout the economy and oversees almost 4,000 cleanups across the country each year.

In addition, approximately 546,000 underground storage tanks nationwide store petroleum or hazardous substances and are managed to safeguard against the contamination of groundwater, which serves as the source of drinking water for nearly half of all Americans.

EPA, under the Trump Administration has made several achievements in preventing and protecting our nation's land from hazardous waste contamination, including:

Waste Management:

- Recently, EPA added aerosol cans to the Universal Waste program which streamlines the management of commonly generated wastes such as batteries and fluorescent lighting. Aerosol cans account for nearly 40 percent of retail items that are managed as hazardous waste at large retail facilities. The rule promotes recycling while saving \$5.3 million annually in regulatory costs. This is part of a wider retail strategy to make hazardous waste regulations more adaptable to a retail setting.
- Last year, EPA finalized cost-saving, streamlined standards for handling hazardous waste pharmaceuticals to better fit the operations of the healthcare sector while maintaining protections of

human health and the environment. The rule also protects drinking water by prohibiting sewerage of these wastes while generating up to \$15 million a year in cost savings.

- EPA launched a national system for tracking hazardous waste shipments electronically on June 30, 2018. The e-Manifest system improves access to higher quality and more timely hazardous waste shipment data, and will save state and industry users more than \$50 million annually, once electronic manifests are widely adopted.
- In 2018, EPA finalized regulatory changes for the safe management of recalled airbags which helped facilitate the urgent removal of defective Takata airbag inflators and producing an estimated cost savings of \$1.7 to 13 million annually.

Underground Storage Tanks:

- EPA, states, and tribes have cleaned up more than 493,000 releases from underground storage tanks nationwide since inception of the program, with 3,556 cleanups completed in the first half of fiscal year 2020.
- EPA has worked with states and tribal partners to decrease the numbers of annual underground storage tank releases nation-wide from between 25,000-66,000 per year in the 1990s to a low of 5,375 in 2019.
- From 2008 to 2019, states, EPA, and credentialed tribal inspectors conducted over 1.1 million inspections at federally regulated underground storage tank facilities.

According to the EPA, the fundamental elements of these programs established in those early years have been very successful at protecting the American public from hazardous waste contamination and leaking underground storage tanks.

Open dumping, unlined landfills and leaking underground tanks have been replaced by well-engineered sanitary landfills for municipal and industrial waste, and design, installation and inspection standards for underground storage tanks. EPA established these safeguards for the generation and transportation of hazardous waste, including requirements for the disposal or recycling of waste and cleanup standards when contamination does occur.

For more information on the history of RCRA, visit [here](#).

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Bayer Loses Roundup Weedkiller Appeal

<https://www.wsj.com/articles/bayer-loses-roundup-appeal-11595275537>

California appeals court rules in favor of school groundskeeper but reduces damages awarded

Bayer has steadfastly said that Roundup and the weedkiller's active ingredient, glyphosate, are safe and backed by regulators.

By Sara Randazzo

Updated July 20, 2020 4:18 pm ET

Bayer AG BAYRY 0.74% lost an appeal in the first case to go to trial linking its Roundup weedkiller to cancer, though the California court greatly reduced the amount of damages awarded to \$20.4 million.

The Monday decision by the California Court of Appeal comes in the case of school groundskeeper Dewayne Johnson, who won a 2018 jury trial blaming Roundup for causing his non-Hodgkin lymphoma. The jury's initial \$289.2 million award sent Bayer's stock tumbling and was followed by an even larger \$2 billion award in a second trial.

Bayer, which inherited Roundup's legal liabilities with its \$63 billion acquisition of seed and pesticide maker Monsanto Co. two years ago, recently said it would pay up to \$10.9 billion to settle tens of thousands of Roundup lawsuits. The company said at the time it was still pursuing appeals in the three cases that have gone to trial.

Bayer has steadfastly said that Roundup and the weedkiller's active ingredient, glyphosate, are safe and backed by regulators including the U.S. Environmental Protection Agency. The company had argued to the California court that the jury decision should be thrown out in part because it conflicts with an EPA position preventing the company from putting a cancer-warning label on the product.

The court disagreed, finding that while the EPA currently says glyphosate isn't harmful to humans and that no cancer warning is needed, "that opinion, in the abstract, isn't binding on this court."

In shutting down separate arguments Bayer had made, the three-judge panel also said, "In our view, Johnson presented abundant—and certainly substantial—evidence that glyphosate, together with the other ingredients in Roundup products, caused his cancer." The judges pointed to experts who told jurors that Roundup could cause non-Hodgkin lymphoma generally as well as Mr. Johnson's cancer in particular.

The court reduced damages for economic loss to \$10.2 million and said any punitive damage should match, granting total damages of \$20.4 million. The judge who oversaw the trial had already reduced the original award to \$78.5 million.

Brent Wisner, an attorney for Mr. Johnson, called the Monday ruling "another major victory" for Mr. Johnson and his family. He said the reduction in damages is "a function of a deep flaw in California tort law" that makes it difficult to have money awarded for a shortened lifespan, an issue he hopes would be addressed if the case goes to the California Supreme Court.

Bayer can still appeal the case to California's highest court. The company didn't immediately respond to requests for comment Monday.

Glyphosate's safety came under scrutiny in 2015 after the International Agency for Research on Cancer, a unit of the World Health Organization, classified glyphosate as likely having the potential to cause cancer.

Write to Sara Randazzo at sara.randazzo@wsj.com

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